

## REMARKS

### 1. Formal Matters

#### a. Status of the Claims

Claims 23-34 are pending in this application. Claims 23-25, 27-30, 32, and 34 are hereby canceled without prejudice to pursuing the canceled subject matter in a continuing application; claims 26, 31, and 33 are amended; and claims 35-40 are new. Applicant respectfully requests entry of the amendments and remarks made herein into the file history of the instant application. Upon entry of these amendments, claims 26, 31, 33, and 35-40 will be pending and under active consideration.

#### b. Amendments to the Claims

Support for the claims can be found in the application as originally filed as described in Table 1.

**Table 1**

<b>Claim</b>	<b>Support</b>
31	paragraph 0035
33	paragraph 0035
35	Table 2 B, lines 4474648-4474741; Table 1, line 241237; and paragraph 201
36	paragraph 0035
37	paragraph 0035
38	Table 2 B, lines 4474648-4474741; Table 1, line 241917; and paragraph 201
39	paragraph 0035
40	paragraph 0035

#### c. Oath/Declaration

On page 3 of the Office Action, the Examiner alleges that the oath or declaration is defective. Specifically, the Examiner asserts that the oath or declaration is defective because the oath/declaration signed by the inventors does not list their names, or any citizenship or address information. As required by the Examiner, Applicant submits herewith a declaration in compliance with 37 C.F.R. § 1.67(a).

### 2. Patentability Remarks

#### a. 35 U.S.C. § 112, first paragraph

On pages 3-6, the Examiner rejects claims 23-34 under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the written description requirement. Specifically, the Examiner alleges that the limitations “19 to 140 nucleotides,” “at least 19 nucleotides of SEQ ID NO: 4204050”, and “a sequence at least 52/67 identical to” in independent claim 23 lack written descriptive support. The Examiner asserts that dependent claim 26 has similar unsupported limitations as claim 23. Similarly, the further Examiner alleges that the limitation “19-24 nucleotides” in dependent claim 25 is not supported by

the teachings of the specification. The Examiner concludes that claims 28 has similar unsupported limitations as claim 25.

Without prejudice to pursuing the canceled subject matter in a continuing application, claim 26 is amended to independent form and does not recite a sequence at least 52/67 identical to a nucleic acid of at least 19 consecutive nucleotides of SEQ ID NO: 4204050. Moreover, claims 23-25, 27-30, 32, and 34 have been canceled without prejudice, thereby rendering the Examiner's rejection of these claims moot. In view of the foregoing amendment and remarks, Applicant respectfully requests that the written description rejection of claims 23-34 under 35 U.S.C. §112, first paragraph, has been overcome and should be withdrawn.

**b. 35 U.S.C. § 102(e)**

On pages 6 and 7 of the Office Action, the Examiner rejects claims 23-34 under 35 U.S.C. § 102(e) as allegedly being anticipated by Zamore *et al.* (US 20060293267; "Zamore"). The Examiner asserts that Zamore teaches a sequence that consists of at least 19 nucleotides of instant SEQ ID NO: 117937 and consists of 22 nucleotides of instant SEQ ID NO: 4204050. The Examiner concludes that claims 23-34 are anticipated by Zamore. Applicant respectfully disagrees.

Applicant respectfully submits that Zamore is not a §102(e) reference. Zamore has a filing date of April 13, 2006 claiming priority to U.S. Prov. Appl. No. 60/671,356 on April 13, 2005. The actual filing date of Applicant's application is May 26, 2004, nearly a year before Zamore's earliest priority date. Accordingly, Zamore does not qualify as §102(e) art because it is not a U.S. patent publication filed by another before the invention by the Applicant for a patent. In view of the foregoing amendments and remarks, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of the claims 23-34 under 35 U.S.C. § 102(e) in view of Zamore .

### 3. Conclusion

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

POLSINELLI SHALTON FLANIGAN SUELTHAUS PC

Dated: November 28, 2007

On behalf of: Teddy C. Scott, Jr., Ph.D.  
Registration No. 53,573

By: /Ron Galant, Ph.D./  
Ron Galant, Ph.D.  
Registration No. 60,558  
Customer No. 37808

POLSINELLI SHALTON FLANIGAN SUELTHAUS PC  
180 N. Stetson Ave., Suite 4525  
Chicago, IL 60601  
312.819.1900 (main)  
312.602.3955 (E-fax)  
312.873.3613 (direct)